




## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 24, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0138

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy	Not Sustained - Unfounded

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy	Not Sustained - Unfounded

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

Named Employee #1 (NE#1)—a civilian administrative staff analyst—was assigned to process a public disclosure request (PDR) involving text messages from Named Employee #2 (NE#2)—a civilian strategic advisor. The Complainant—a PDR requestor—alleged that the named employees violated the Public Records Act (PRA) by not turning over all requested records. The Complainant further alleged that the material provided was inappropriately redacted, out of order, and of low fidelity.

### **ADMINISTRATIVE NOTE:**

On August 8, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

OPA received a complaint via email and opened an investigation. During its investigation, OPA reviewed the OPA complaint, email correspondence, city cell phone search declaration, and city policy on processing public disclosure requests. OPA also interviewed NE#1 and NE#2.

This complaint arose during an email exchange between the Complainant and NE#1 while processing a PDR. That email exchange is summarized as follows:



- On September 23, 2022, the Complainant submitted a PDR for all text messages between NE#2's personal cell phone and the personal cell phone or work phone of any SPD employee or King County employee between May 30, 2020, and September 10, 2020.
- On November 18, 2022, NE#1 emailed the Complainant, saying his first installment was released. NE#1 also informed the Complainant that his next installment would be released on or before January 20, 2023.
- On January 20, 2023, NE#1 emailed the Complainant, saying his second installment was released. NE#1 also informed the Complainant that his next installment would be released on or before March 24, 2023. The Complainant replied, asking NE#1 to send the records to NE#2 because he wanted the texts in "true digital format." The Complainant wrote, "[NE#2's] scans and printouts are totally incomplete and scattered" and "shield and omit significant records that are only [partial]." The Complainant requested that this installment be appealed and that texts be provided "natively through the i-message pdf exporter" so that "no message is omitted."
- On January 25, 2023, NE#1 emailed the Complainant, saying she did not produce all records, she was reviewing "a little over 100 more pages of texts," and she would try to get them all released in the next installment. NE#1 wrote that she needed to produce all records before she could process any appeal.
- On March 23, 2023, NE#1 noted in the PDR file that the Complainant would likely appeal his PDR based on screenshotted and missing texts. NE#1 also wrote, "This is also off of [NE#2's] personal cell, so anything cut off that wasn't provided is also likely not work related."
- On March 27, 2023, NE#1 emailed the Complainant, saying his third installment was released. NE#1 also informed the Complainant that this installment concluded his PDR and his PDR was closed.
- On March 28, 2023, the Complainant replied to NE#1's March 27 email, requesting an appeal. The Complainant wrote that the records he received were incomplete or partially shown and that more records were not provided. The Complainant wrote that SPD and NE#2 obscured the records and made them "unintelligible" by emailing, printing, and scanning them. The Complainant wrote, "Please issue the original messages in a native electronic format, including images and attachments, so as not to lose any fidelity of their content. Destroying the fidelity of the content is destroying a record." The Complainant also wanted to initiate an OPA complaint against NE#1 and NE#2 for violating the PRA.

NE#2 wrote a city cell phone search declaration under penalty of perjury. NE#2 wrote that she searched her personal cell phone and personal email account in response to the Complainant's PDR, located records, and submitted them to the Public Disclosure Unit (PDU). NE#2 wrote, "I provided all texts and emails located in my search to PDU as instructed in the email asking me to search for records responsive to [the PDR]." NE#2 signed this declaration on April 6, 2023.

OPA requested an interview with the Complainant on three separate days, but the Complainant did not respond to OPA's request.

OPA interviewed NE#1. NE#1 said she followed the guidelines for redaction. NE#1 said, "So, it's not necessarily ever my decision to withhold something. If we're not giving something out, it's because we legally are not able to." NE#1 said she was not required to produce records in a specific format under the PRA but accommodates when she can.



NE#1 said, "So, we don't really create records, and we don't alter them. We take them as we receive them, and we produce them that way," except for redactions. NE#1 said if she receives records in paper format, she scans them, sends them to her email, and reviews them for redactions. NE#1 said that when she asked NE#2 to produce work-related texts on her personal cell phone, NE#2 took screenshots of responsive texts, emailed them to herself, printed and dated them for organizational purposes, and submitted them to NE#1. NE#1 said she received cut-off texts from NE#2, but PDU concluded that those messages were not work-related because they were conversations between friends. NE#1 said she would not know if she received all responsive texts because she was not permitted to search someone's personal cell phone but believed NE#2 produced all responsive texts based on NE#2's declaration. NE#1 thought she complied with the PRA.

OPA interviewed NE#2. NE#2 said she fully cooperated with the Complainant's PDR by submitting all responsive records to PDU. NE#2 said she wrote a declaration affirming that she disclosed all responsive text messages. NE#2 believed the Complainant misunderstood what text communications occurred on her personal cell phone.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy***

The Complainant alleged that NE#1 violated the PRA.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. Under the PRA, an agency does not have to provide a record in a particular electronic format. *Mechling v. City of Monroe*, 152 Wn. App. 830, 849, 222 P.3d 808, 817 (2009). An agency has discretion in record formatting and is not required to provide records in the electronic format demanded by a requester. *Mitchell v. Washington State Dep't of Corr.*, 164 Wn. App. 597, 607, 277 P.3d 670, 674 (2011). The City of Seattle is not required to provide records in a particular electronic format. CPRA-01-2016 Interim Citywide Policy on Processing Public Disclosure Requests section 6.3.

Here, the Complainant alleged multiple violations of the PRA. First, the Complainant requested that all records be sent in "true digital format." Under Washington case law and city policy, NE#1 was not obligated to provide records in an electronic format. Second, the Complainant said that he received incomplete records. This is consistent with NE#1's statement that she received cut-off texts from NE#2, but PDU concluded that those messages were not work-related. The Complainant would not be entitled to those records because a public record subject to disclosure must relate to "the conduct of government or the performance of any governmental or proprietary function." RCW 42.56.010(3). Third, the Complainant said he received "shielded" or "omitted" records. This is consistent with NE#1's redactions. NE#1 said, "We follow specific guidelines, but if there's ever a question about whether or not we think something needs to be redacted, we would typically, like, run it by our supervisor, and then we make a call that way." Redactions are permitted under state law. See WAC 44-14-04004(5)(a) ("If a portion of a record is exempt from disclosure, but the remainder is not, an agency generally is required to redact (black out) the exempt portion and then provide the remainder"); RCW 42.56.210(1) ("the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought"). Fourth, the Complainant said he received "unintelligible" records because they were emailed, printed, and scanned. NE#1 disputed this claim, saying that "there is only one message that I remember in there that was very difficult to read." NE#1 said she did not purposefully diminish the records' quality and denied altering records



---

except for redactions. Moreover, NE#1 said she had no control over the format in which she received records, saying, “That’s the way the records were produced to me.”

Accordingly, no evidence suggests that NE#1 violated the PRA, and OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy***

The Complainant alleged that NE#2 violated the PRA.

Here, the Complainant said more records were responsive to his PDR than NE#2 provided. NE#2 signed a declaration under penalty of perjury, saying, “I provided all texts and emails located in my search to PDU as instructed in the email asking me to search for records responsive to [the PDR].” OPA found no evidence refuting that claim.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**